

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

2019 MAY 20 PM 1:27

DEPUTY CLERK: ERUNITED STATES OF AMERICA *ex rel.*  
SUSAN DE SESSA,

Plaintiff,

v.

DALLAS COUNTY HOSPITAL  
DISTRICT d/b/a PARKLAND HEALTH  
AND HOSPITAL SYSTEM,

Defendant.

Civil Action No. 3:17-CV-1782-K

FILED IN SEALED CASE**UNITED STATES OF AMERICA'S REPLY IN SUPPORT OF  
MOTION TO PARTIALLY DISMISS RELATOR DE SESSA'S COMPLAINT**

In her Response to the United States' Motion to Partially Dismiss, Relator concedes "it is the government's prerogative to choose which cases to litigate and which they do not feel they can/wish to successfully litigate." (Dkt. No. 24 at 1.) Consistent with the Court's holding in *United States ex rel. Gal-Or v. Northrop Grumman*, No. 4:17-cv-00139-O (N.D. Tex. Oct. 26, 2017) (O'Connor, J.), Relator also concedes that "the US Attorneys' office has complete jurisdiction over which cases they pursue and which they do not." *Id.* at 3; *see also Gal-Or* Order at 4 (deferring to the Government's "absolute discretion" and dismissing the *qui tam* complaint on the Government's motion pursuant to 31 U.S.C. § 3730(c)(2)(A) without further inquiry). But while Relator "agree[s] with the dismissal of the case" she requests that the Court dismiss her claims without prejudice. (Dkt. No. 24 at 3.) The Government opposes this request.

As noted in the Government's motion, the United States only seeks dismissal of Count 1 of Relator's Complaint, which she asserted on behalf of the United States. The Government does not move for dismissal of Relator's retaliation claim (Count 2), and, accordingly, does not oppose dismissal of that claim without prejudice to Relator.

But the United States does oppose Relator's request to dismiss Count 1 of the Complaint without prejudice to her refiling of the same. Should Relator refile her *qui tam* complaint in another district, another U.S. Attorney's Office and/or component of the Department of Justice will be tasked with investigating the same allegations already evaluated in connection with this action. And another court will have to review Relator's allegations and/or the Government's subsequent motion to dismiss Relator's new Complaint pursuant to 31 U.S.C. § 3730(c)(2)(A). For these reasons, the Government opposes Relator's request to dismiss her False Claims Act claim (Count 1) without prejudice to herself because it would result in duplicative expenditure—and waste—of government and judicial resources.

### CONCLUSION

Because nothing in Relator's response changes the Government's position regarding partial dismissal, the Government respectfully requests that the Court: (1) apply the holding in *Gal-Or* that the Government has absolute discretion to seek dismissal of *qui tam* claims asserted on its behalf; and (2) dismiss Count 1 of Relator's Complaint pursuant to 31 U.S.C. § 3730(c)(2)(A) with prejudice as to Relator.

Further, Relator indicated that she does not object to the investigative filings in this case remaining under seal. (Dkt. No. 24 at 3.) As such, the Government renews its request that the Court unseal only the Complaint, the Motion to Dismiss (and the associated Response and Reply), and the Court's accompanying Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was mailed via regular mail on this 20<sup>th</sup> day of May 2019 to:

Dr. Susan DeSessa  
1433 Amber Court  
Burleson, Texas 76028



RICHARD J. GULTINAN